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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1255

BANK OF NEW YORK,

Petitioner,

against

LOUISE A. GRIFFITH,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

GEORGE W. MARTIN,
Counsel for Petitioner.

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To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner, Bank of New York, prays that a writ of certiorari issue to review the decision of the United States Circuit Court of Appeals for the Second Circuit, in this case, reversing the decision of the United States District Court for the Southern District of New York.

Jurisdiction

The order for mandate was entered March 19, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Summary Statement of Matter

In 1938, your petitioner, Bank of New York, was trustee under the will of Anna R. Morison (62-63), for the benefit of Ada Kaufman for life, remainder to her two children—of whom the respondent, Louise A. Griffith is one. In that year Ada Kaufman died (27), and the trust term ended.

Bank of New York promptly brought an action in the New York Supreme Court to have the will construed, and to account as trustee (44). This action resulted in an interlocutory decree dated July 1, 1940, and a final judgment dated August 27, 1941 (4-15). The final judgment, which settled the accounts of the trustee and discharged it (20), was made on consent of the respondent (16); and no appeal therefrom has ever been taken, and no motion with regard to it has ever been made. It is admitted that this judgment constitutes a discharge of all liability on the part of the trustee (20). Under this judgment her entire remainder interest in the trust property was delivered by the trustee to the respondent (21).

In 1943 a collateral attack on this judgment was made by the respondent. She sued out a citation in the Surrogates' Court in New York County and served it

on your petitioner, praying (26-60) that your petitioner be compelled to account as trustee for the trust property which your petitioner had turned over to her pursuant to the judgment of the Supreme Court in 1941. And she alleged that she had been subjected to duress when she executed the consent to the entry of that judgment (59-60) in that the trustee refused to surrender the trust property to her without a judgment (whether by consent or after a trial).

The Surrogates' Court held a hearing, and dismissed the respondent's petition and vacated the citation (75-76); and the Surrogate wrote a memorandum of decision reported in New York Law Journal October 26, 1943, at pages 1087-1088, which is printed in full *infra*. And he said:

> "If fraud or newly discovered evidence or other grounds for the vacatur of that judgment is claimed, the attack upon it must be made by a direct application to the Supreme Court."

Thus the issue of duress was judicially decided, and the law of New York was stated. From this adjudication by the Surrogates' Court no appeal was taken, and no motion with regard to it has ever been made.

In 1944 another collateral attack on the judgment of the Supreme Court was made by this respondent. She commenced this action in the United States District Court for the Southern District of New York, and alleged damages on account of duress exerted upon her by your petitioner in that the trustee refused to surrender the trust property to her without a judgment (whether by consent or after a trial); and she pleaded

the judgment was a good bar to liability (21), and had been so held by decree of the Surrogates' Court (22), and because it was a bar to liability, she had sustained damage.

The District Court held a hearing, and dismissed the respondent's complaint (84-85) and wrote two memoranda (77-79; 83). And he said:

> "The plaintiff in this action first brought a proceeding in the Surrogates' Court, New York County, in which she petitioned for the filing of a compulsory account. That proceeding was dismissed upon the ground that the judgment in the Supreme Court was conclusive and could not be collaterally attacked" (78-79).

This respondent then appealed to the Circuit Court of Appeals, which Court reversed the District Court and remanded the case.

Questions Presented

(1.) In a Federal Court must the judgment of a State Court be accorded the same effect as *res judicata* that would be given to it by the courts of the state in which it was rendered?

(2.) Having litigated the issue of extrinsic fraud and duress in a competent State Court and been defeated, can the plaintiff then litigate the same question in a Federal Court, acting independently?

(3.) Is the rule as to *res judicata* equally as true of questions of law in their relation to the controversy before the Court as to questions of fact?

(4.) Is there a jurisdiction in Federal Courts to review and revise the acts and decisions of courts of coordinate jurisdiction upon questions which they have lawfully considered and adjudged?

Reasons Relied Upon

The respondent resorted to the Surrogates' Court and there made a collateral attack on the Supreme Court judgment which had settled the trustee's accounts. She pleaded extrinsic fraud and duress (59-60). She alleged the "trustee refused to turn over the trust estate except on release and discharge", and so she had been forced to consent to the judgment.

The Surrogates' Court held this was no allegation of facts sufficient to support a collateral attack (*Vid. Infra*, this brief, p. 14). This is undoubtedly the law of New York. The District Court concurred.

But the Circuit Court of Appeals reversed the District Court, overruled the Surrogates' Court, decided that the facts alleged as to duress were indeed sufficient to constitute a cause of action, and thus constituted itself an appellate tribunal for the purpose of reversing coordinate courts of the State on questions of local law.

This is a departure from the accepted and usual course of judicial proceedings, and is without precedent.

Freeman on Judgments (5th Ed.) § 1465.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, to the end that this case may be reviewed by this Court.

BANK OF NEW YORK,

By: GEORGE W. MARTIN,
Its Counsel.

May 15, 1945.